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Attorneys for Cross-Defendant ISCO INDUSTRIES, LLC

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ISCO INDUSTRIES,)	CASE NO. 4:06-CV-07082-CW
)	
Plaintiff,)	JOINT SUPPLEMENTAL CASE
)	MANAGEMENT STATEMENT AND
v.)	[PROPOSED] ORDER
)	
NORTH BAY CONSTRUCTION, INC., et al.,)	DATE: December 9, 2008
)	TIME: 2:00 p.m.
Defendants.)	PLACE: Courtroom 2, 4th Floor
)	1301 Clay Street
)	Oakland, CA 94612
and RELATED CROSS-ACTION.)	

Pursuant to Civil L.R. 16-149d), that parties to the above-entitled action certify that they met and conferred at least ten (10) days prior to the subsequent case management conference scheduled in this case and jointly submit this Supplemental Case Management Statement and Proposed Order and request the Court to adopt it as a Supplemental Case Management Order in this case.

DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS

1. The following progress or changes have occurred since the last case management statement filed by the parties:

Pursuant to Order of this Court signed January 8, 2008, the Court ordered that (1) the parties are ordered to arbitrate this matter pursuant to the terms from North Bay Construction's ("NBC") Purchase Order 3102, attached as Exhibit D to the Declaration of Steve Geney in Support

1 of NBC's Motion to Compel, (2) this action shall be stayed until completion of the arbitration
2 proceedings, and (3) before engaging in arbitration, the parties shall first make a good-faith effort
3 to mediate the matter before a private mediator agreed upon by the parties. The following
4 discussion is not intended to be a waiver of any mediation privileges, but is intended to
5 communicate to the Court what has happened since January 8, 2008.

6 Since that time, North Bay Construction, Inc. and ISCO Industries, LLC have engaged in
7 an ongoing mediation with mediator Bruce Edwards, Esq. This has been an extended process with
8 the following steps. Mr. Edwards obtained the consent of the County of Sonoma and Wnzler and
9 Kelly to participate in the mediation. For background, this project involves a pipeline owned by
10 the County and designed by Winzler and Kelly. It is intended to carry leachate from a landfill to a
11 transfer station. It has never been operational. NBC contends that issues regarding the pipeline
12 involve its design. It was imperative, for any chance of mediated success, for the County and
13 Winzler and Kelly to participate. After Mr. Edwards obtained their participation, experts for the
14 parties worked on a testing protocol, with the objective being getting the pipeline into operation.
15 Given the scientific and technical issues this situation presents, this work has required multiple
16 meetings, reports, and an in person meeting where experts and others traveled from all over the
17 country for a meeting at the North Bay facility and an all-day expert meeting at JAMS in San
18 Francisco. Recently, Mr. Edwards made a mediator's proposal regarding funding testing and
19 repair. The proposal is still being evaluated by all the parties and if accepted work on the project
20 will commence shortly, and the parties will continue with mediation. It is not anticipated that
21 fruitful damages conversations can occur until the pipeline is operational. One reason is that the
22 County claims large, and growing, damages as a result of the pipeline not being operational. It is
23 paying to truck leachate, as opposed to using the pipeline for transport. North Bay and ISCO are
24 communicating with mediator Edwards and should know shortly if the mediation process will
25 continue, or if it will fail at this point (due to the mediator's proposal not being accepted.)

26 2. The parties jointly request the Court to make the following Supplemental Case
27 Management Order:

28 ///

1 The parties request the Court set this mater for a further case management conference for
2 not less than forty-five (45) days from now.

3
4 DATED: December 2, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By 

7 Jeffery G. Bairey
8 Lorena Matei
9 Attorneys for Cross-Defendant
ISCO INDUSTRIES, LLC

10 DATED: December __, 2008

BELL, ROSENBERG & HUGHTS LLP

11
12 By _____

13 Roland Nikles
14 Attorneys for Plaintiff
ISCO INDUSTRIES, LLC

15 DATED: December __, 2008

ABBEY, WEITZENBERG, WARREN & EMERY, P.C.

16
17 By _____

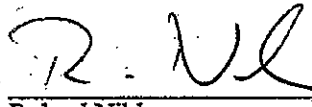
18 David W. Berry
19 Jennifer Millier
20 Attorneys for Defendant/Cross-Complainant
21 NORTH BAY CONSTRUCTION, INC.

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4 DATED: December __, 2008 LEWIS BRISBOIS BISGAARD & SMITH LLP

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6
7 By _____
Jeffery G. Bairey
Lorena Matei
8 Attorneys for Cross-Defendant
ISCO INDUSTRIES, LLC
9

10 DATED: December 2, 2008 BELL, ROSENBERG & HUGHTS LLP

11
12 By  _____
13 Roland Nikles
14 Attorneys for Plaintiff
ISCO INDUSTRIES, LLC

15 DATED: December __, 2008 ABBEY, WEITZENBERG, WARREN & EMERY, P.C.

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Jeffery G. Bairey
Lorena Matei
Attorneys for Cross-Defendant
ISCO INDUSTRIES, LLC

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BELL, ROSENBERG & HUGHTS LLP

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12
13 By

Roland Nikles
Attorneys for Plaintiff
ISCO INDUSTRIES, LLC

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15 DATED: December 2, 2008

ABBEY, WEITZENBERG, WARREN & EMERY, P.C.

16
17
18 By


David W. Berry
Jennifer Millier
Attorneys for Defendant/Cross-Complainant
NORTH BAY CONSTRUCTION, INC.

SUPPLEMENTAL CASE MANAGEMENT ORDER

The Supplemental Case Management Statement and Proposed Order is hereby adopted by the Court as a Supplemental Case Management Order for the case and the parties are ordered to comply with this Order.

[In addition the Court orders as follows:] **The Case Management Conference is continued to 2/3/09 at 2:00 p.m. An updated CMC statement will be due one week prior to the conference.**

DATED: 12/5/08



UNITED STATES DISTRICT JUDGE
~~Claudia M. Wilkin~~ Wilken